

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THOMAS HARE,

Plaintiff,

v.

No. 2:19-cv-01091-RB-GJF

BENNETT J. BAUR, an individual;
STATE OF NEW MEXICO LAW
OFFICES OF THE PUBLIC DEFENDER;
JENNIFER BIRMINGHAM, an individual;
JAMES WALKER, an individual; and
MICHELLE HALEY, an individual;

Defendants.

**MEMORANDUM OPINION AND ORDER OVERRULING OBJECTIONS,
DENYING MOTION TO VACATE ORDERS, AND DENYING MOTION TO RECUSE**

THIS MATTER comes before the Court on Plaintiff's Objections to the Order Setting Pretrial Deadlines and Briefing Schedule; and Motion to Vacate All Orders Issued by the Judges Cited in Plaintiff's Objections, filed April 3, 2020. (Doc. 46.)

Objections to Scheduling Order

The Court overrules Plaintiff's Objections to Judge Fouratt's Scheduling Order as untimely. Rule 72 of the Federal Rules of Civil Procedure states a party may file objections to a Magistrate Judge's pretrial order regarding nondispositive matters "within 14 days after being served with a copy." Fed. R. Civ. P. 72(a) (stating "A party may not assign as error a defect in the order not timely objected to"). Judge Fouratt entered his Scheduling Order on February 14, 2020. (*See* Doc. 28.) Plaintiff did not file his Objections to Judge Fouratt's Scheduling Order until April 3, 2020, which is well outside the time allowed for filing objections.

Motion to Vacate Orders

Plaintiff moves the Court to vacate all Orders entered by Judge Fouratt, “Chief Judge Johnson, if any,” and the undersigned “based on unethical conduct by these judges and pending Complaints of Judicial Misconduct or Disability against these judges.” (Doc. 46 at 5.)

The Court denies Plaintiff’s motion to vacate all Orders because Plaintiff has not “state[d] with particularity the grounds” for the relief sought as required by D.N.M. LR-Civ. 7.1(a). Plaintiff’s conclusory allegation of “unethical conduct” without any citation to legal authority is not sufficient to warrant the relief Plaintiff seeks. Similarly, the Court overrules Plaintiff’s objections to Defendants’ discovery requests based on Judge Fouratt’s allegedly “unethical order.” (See Doc. 46 at 4–5.)

Motion for Recusal

Plaintiff moves “for Judge Brack to recuse himself from presiding over this case because of the Complaint of Judicial Misconduct or Disability currently pending against him, which will make it impossible for him to preside over this case fairly and impartially.” (Doc. 46 at 5.)

The Court denies Plaintiff’s motion for the undersigned to recuse because Plaintiff has not alleged any relevant facts supporting Plaintiff’s belief that the undersigned is biased.

The party moving to disqualify a judge is ordinarily assigned the burden of proof. See *Topeka Housing Auth. v. Johnson*, 404 F.3d 1245, 1247 (10th Cir. 2005) (stating party urging disqualification bears “heavy burden of showing the requisite judicial bias or misconduct”); *Cauthon v. Rogers*, 116 F.3d 1334, 1336 (10th Cir. 1997). Relevant facts must support the moving party’s belief that the judge is biased. See *United States v. Mendoza*, 468 F.3d 1256, 1262 (10th Cir. 2006); *Nichols*, 71 F.3d at 352.

Burke v. Regalado, 935 F.3d 960, 1054 (10th Cir. 2019). Plaintiff states that the undersigned “has engaged in unethical conduct by failing to order the Clerk of Court to follow the applicable law with regard to defaults and default judgments as requested by Plaintiff.” (Doc. 46 at 4.) However,

“[a]dverse rulings by a judge in a case are not grounds for disqualification.” *Baker v. Simmons*, 65 F. App’x. 231, 237 (10th Cir. 2003) (citing *United States v. Bray*, 546 F.2d 851, 857 (10th Cir. 1976)).

IT IS ORDERED that:

- (i) Plaintiff’s Objections to the Order Setting Pretrial Deadlines and Briefing Schedule (Doc. 46) are **OVERRULED**.
- (ii) Plaintiff’s Motion to Vacate All Orders Issued by the Judges Cited in Plaintiff’s Objections (Doc. 46) is **DENIED**.
- (iii) Plaintiff’s Motion for Recusal of Senior United States District Judge Robert C. Brack (Doc. 46) is **DENIED**.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE